

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

UNITED STATES OF AMERICA,

Case No. 2:12-CV-2042 JCM (PAL)

Plaintiff(s),

ORDER

v.

\$142,256.00 IN UNITED STATES
CURRENCY AND/OR CASINO CHIPS,

Defendant(s).

Presently before the court is the government's motion for default judgment of forfeiture. (Doc. # 46).

Default judgment is appropriate "when a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise. . ." Fed. R. Civ. P. 55(a). Federal Rule of Civil Procedure 55(b)(2) provides that "a court may enter a default judgment after the party seeking default applies to the clerk of the court as required by subsection (a) of this rule." Fed.R.Civ.P. 55(b)(2).

Obtaining a default judgment entails two steps: "first, the party seeking a default judgment must file a motion for entry of default with the clerk of a district court by demonstrating that the opposing party has failed to answer or otherwise respond to the complaint, and, second, once the clerk has entered a default, the moving party may then seek entry of a default judgment against the defaulting party." *See UMG Recordings, Inc. v. Stewart*, 461 F. Supp. 2d 837, 840 (S.D. Ill. 2006). Where a party has not been properly served, there is no basis for a court to enter default judgment. *See Fairly v. Potter*, 2003 WL 402261, *4 (N.D. Cal. 2003).

...

1 The choice whether to enter a default judgment lies within the discretion of the trial court.
2 *Aldabe v. Aldabe*, 616 F.3d 1089, 1092 (9th Cir. 1980). In the determination of whether to grant
3 a default judgment, the trial court should consider the seven factors articulated in *Eitel v.*
4 *McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986). These factors are: (1) the possibility of
5 prejudice to plaintiff, (2) the merits of the claims, (3) the sufficiency of the complaint, (4) the
6 amount of money at stake, (5) the possibility of a dispute concerning material facts, (6) whether
7 default was due to excusable neglect, and (7) the policy favoring a decision on the merits. *Id.* In
8 applying these *Eitel* factors, “factual allegations of the complaint, except those relating to the
9 amount of damages, will be taken as true.” *Geddes v. United Fin. Grp.*, 559 F.2d 557, 560 (9th
10 Cir. 1977); *see* Fed. R. Civ. P. 8(d).

11 On September 16, 2014, the clerk of the court entered default. (Doc. # 45). Plaintiff has
12 properly complied with Rule 55 and now asks the court to enter default judgment against
13 defendant under Federal Rule of Civil Procedure 55(b)(2). After considering the *Eitel* factors,
14 the court finds it appropriate to enter default judgment against the defendant.

15 Accordingly,

16 IT IS HEREBY ORDERED, ADJUDGED, DECREED that plaintiff’s motion for default
17 judgment of forfeiture (doc. # 46) is GRANTED.

18 IT IS FURTHER ORDERED that plaintiff shall prepare an appropriate judgment.

19 DATED October 1, 2014.

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21 UNITED STATES DISTRICT JUDGE
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